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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CARLOS F. CERVANTES,  
Plaintiff and Appellant,

v.

RAMPARTS, INC.,  
Defendant and Respondent.

A098642

(San Francisco County  
Super. Ct. No. 310381)

Plaintiff Carlos F. Cervantes appeals from an order quashing service of the summons and complaint on defendant Ramparts, Inc. We affirm the order.

**BACKGROUND**

Plaintiff filed suit against the Luxor Hotel, located in Nevada, over a slip and fall accident alleged to have occurred in the hotel's restroom in 1999. A summons and complaint was eventually served on the Mandalay Resort Group (MRG) as Doe No. 1. In discovery, MRG identified its subsidiary, respondent Ramparts, Inc., as the owner and operator of the Luxor Hotel. MRG was thereafter dismissed without prejudice.

In October 2001, plaintiff served Ramparts with a summons and complaint. Plaintiff was allowed 90 days to conduct discovery on jurisdictional issues pertaining to Ramparts, whereupon Ramparts appeared specially and moved to quash service of the summons due to lack of personal jurisdiction.

In support of its motion to quash, Ramparts submitted the declaration of its associate general counsel, William T. Martin. Martin averred that Ramparts: (1) was incorporated in and maintained its head office and principal place of business in Nevada;

(2) had no officers, employees, subsidiaries or affiliates in California and did not regularly engage in business in California; (3) maintained no bank accounts, assets, or real property in California; (4) paid no taxes and filed no tax returns in California; and (5) has never voluntarily consented to jurisdiction in California.

In response to the motion, plaintiff produced discovery responses showing that: (1) Ramparts maintained a Web site on the Internet in 1999 advertising the Luxor Hotel; (2) the Luxor Hotel Web site enabled users to send e-mail to the hotel and make hotel reservations; (3) Ramparts advertised in California during 1999 for the Luxor Hotel and Casino, including placing radio spots and putting advertisements in the Los Angeles Times and San Francisco Chronicle; (4) Ramparts has sold rooms to tour operators with offices in California and has paid commissions to California-based travel agents; and (5) Ramparts has purchased supplies and furniture shipped from California.

Plaintiff made no contention and produced no evidence that he is a resident of California, that he has ever been in California, or that his visit to the Luxor Hotel came about as a result of any advertising or promotion done in this state. Plaintiff's papers in opposition to the motion to quash stated in passing that plaintiff "wanted to return to his home in Mexico" after his injury in Nevada, but offered no further information as to his residence.

Ramparts's motion to quash service of summons was granted, and this timely appeal followed.

## **DISCUSSION**

### Applicable Law

The general principles applicable to a motion to quash for lack of personal jurisdiction are explained in *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434 (*Vons Companies*): "California's long-arm statute authorizes California courts to exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California. (Code Civ. Proc., § 410.10.) A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process

clause of the federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ‘ “traditional notions of fair play and substantial justice.” ’ [Citations.]” (*Id.* at pp. 444–445.)

“Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the *general* jurisdiction of the forum if his or her contacts in the forum state are ‘substantial . . . continuous and systematic.’ [Citation.] In such a case, ‘it is not necessary that the specific cause of action alleged be connected with the defendant’s business relationship to the forum.’ [Citation.] Such a defendant’s contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction.” (*Vons Companies, supra*, 14 Cal.4th at pp. 445–446.)

“If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the ‘controversy is related to or “arises out of” a defendant’s contacts with the forum.’ [Citations.]” (*Vons Companies, supra*, 14 Cal.4th at p. 446.) A controversy relates to or arises out of such contacts if there is a substantial connection between the forum contacts and the plaintiff’s claim. (*Id.* at p. 452.)

“When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. [Citation.] Once facts showing minimum contacts with the forum state are established, however, it becomes the defendant’s burden to demonstrate that the exercise of jurisdiction would be unreasonable. [Citation.] When there is conflicting evidence, the trial court’s factual determinations are not disturbed on appeal if supported by substantial evidence. [Citation.] When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record. [Citation.]” (*Vons Companies, supra*, 14 Cal.4th at p. 449.)

There is no dispute about the facts in this case. Accordingly, we review the matter *de novo*.

### General Jurisdiction

Plaintiff never states explicitly whether he is contending California has special or general jurisdiction over Ramparts. We find no evidence to support either basis for jurisdiction.

General jurisdiction requires substantial, continuous, and systematic activity by the nonresident defendant in the forum state. (*Vons Companies, supra*, 14 Cal.4th at p. 445.) Here, the evidence shows that Ramparts had no offices, assets, or employees in California. It is not registered to do business in California and it pays no taxes here. It retained no independent contractors in California to advertise its hotel properties. Ramparts's only "continuous" contact with this state is that it maintained a Web site that allowed Internet users in California, or anywhere else, to learn about and send e-mail to the Luxor Hotel. Otherwise, Ramparts promoted its hotels in California by advertising in local media, and paying commissions from time to time for bookings made by independent tour operators and travel agents based in California.

These contacts fall far short of those required to support general jurisdiction. In *Congoleum Corp. v. DLW Aktiengesellschaft* (9th Cir. 1984) 729 F.2d 1240, the court held that a foreign corporation's extensive sales activities in the forum state, including solicitation of orders, promotions through the mail and showroom displays, and appearances at trade shows and sales meetings, were insufficient to support general jurisdiction. (*Id.* at pp. 1242–1243.) In *Fisher Governor Co. v. Superior Court* (1959) 53 Cal.2d 222, nonresident plaintiffs brought suit in California to recover for injuries arising from an Idaho explosion. The defendant sold its products in California through independent, nonexclusive sales agents. The agents received commissions on the sales, and distributed the defendant's catalogs. The court held that "sales and sales promotion within the state by independent nonexclusive sales representatives" will not support jurisdiction over unrelated causes of action. (*Id.* at 225; see also *Shute v. Carnival Cruise Lines* (9th Cir. 1990) 897 F.2d 377, 381, *revd. on other grounds*, 499 U.S. 585 (1991) [cruise ship's advertisements, mailing of brochures to travel agents, and conducting of promotional seminars in forum insufficient for general jurisdiction].)

Maintenance of an Internet Web site accessible from California also does not support general jurisdiction. Such an activity is directly analogous to maintaining an “800” telephone number, an activity found insufficient to support general jurisdiction in *Circus Circus Hotels, Inc. v. Superior Court* (1981) 120 Cal.App.3d 546 at p. 567, disapproved on another ground in *Vons Companies, supra*, 14 Cal.4th at p. 461. “A finding of jurisdiction based on the fact that the web page is accessible in the forum means that there would be nationwide jurisdiction over anyone who posts a web page. . . . [which] ‘. . . would eviscerate personal jurisdiction requirements as they currently exist.’ [Citation.]” (*ESAB Group, Inc. v. Centricut, LLC* (D.S.C. 1999) 34 F.Supp.2d 323, 330, fn. 4.) That the Ramparts Web site permitted limited interactivity does not distinguish it from maintenance of an “800” telephone number for purposes of establishing general jurisdiction. (See *GTE New Media Services Inc. v. BellSouth Corp.* (D.C. Cir. 2000) 199 F.3d 1343, 1350 [“[A]dvent of advanced technology . . . , as with the Internet, should [not] vitiate long-held and inviolate principles of . . . jurisdiction.”].)

Finally, Ramparts’s purchases of supplies that may have been shipped from California does not confer general jurisdiction. “[M]ere purchases, even if occurring at regular intervals, are not enough to warrant a State’s assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions.” (*Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984) 466 U.S. 408, 418.)

Thus, California may not assert personal jurisdiction over Ramparts unless Ramparts purposefully availed itself of the benefits of conducting activities in this state, the controversy relates to or arises out of those activities, and the exercise of jurisdiction comports with fair play and substantial justice. (*Vons Companies, supra*, 14 Cal.4th at pp. 446–448.)

#### Special Jurisdiction

Although plaintiff asserts that his causes of action have a “substantial connection” with Ramparts’s forum-related activities under *Vons Companies, supra*, 14 Cal.4th at pp.

452, he never ventures to explain what he believes that connection might be. On the record before us, we perceive none.

Plaintiff is apparently a resident of Mexico, not California. There is no evidence that he has ever set foot in California or that his 1999 trip to the Luxor Hotel was in any way related to Ramparts's activities in California. Not only is plaintiff unable to establish a *substantial* connection between Ramparts's California activities and his injury, he is unable to show, or even attempt to articulate, *any* connection whatsoever. Thus, plaintiff's jurisdictional claim fails the second prong of the test for special jurisdiction. We are also at a loss to understand California's interest in providing a forum for two nonresidents to adjudicate liability for a slip and fall accident that occurred outside of this state. (See *Vons Companies, supra*, 14 Cal.4th at pp. 475–476 [court must consider the interest of the state itself in evaluating the reasonableness of asserting jurisdiction].)

Plaintiff requests that we condition our affirmance of the order quashing service on Ramparts's stipulation not to assert a statute of limitations defense if the action is re-filed in another state. We decline to do so. No principle of equity requires the defendant to relieve plaintiff from the consequences of his own forum shopping.

### **DISPOSITION**

The order quashing service of the summons and complaint on defendant Ramparts is affirmed.

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Margulies, J.

We concur:

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Marchiano, P.J.

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Stein, J.